

REFERENCE TITLE: prohibited possessors; persistently, acutely disabled

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2532

Introduced by
Representatives Ash: Driggs

AN ACT

AMENDING TITLE 13, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-924; AMENDING SECTIONS 13-3101, 32-2612 AND 36-540, ARIZONA REVISED STATUTES; RELATING TO PROHIBITED POSSESSORS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 13, chapter 9, Arizona Revised Statutes, is amended
3 by adding section 13-924, to read:

4 13-924. Restoration of right to possess a firearm: mentally ill
5 persons: application

6 A. ON PROPER APPLICATION, A PERSON WHO WAS FOUND TO CONSTITUTE A
7 DANGER TO HIMSELF OR OTHERS OR TO BE PERSISTENTLY OR ACUTELY DISABLED AND WHO
8 WAS SUBJECT TO A TREATMENT ORDER PURSUANT TO SECTION 36-540 MAY REQUEST THE
9 COURT THAT ENTERED THE TREATMENT ORDER TO RESTORE THE PERSON'S RIGHT TO
10 POSSESS A FIREARM ON A SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT THE
11 PERSON NO LONGER SUFFERS FROM THE MENTAL DISORDER THAT LED TO THE FINDING
12 THAT THE PERSON CONSTITUTED A DANGER TO HIMSELF OR OTHERS OR WAS PERSISTENTLY
13 OR ACUTELY DISABLED. THE PERSON OR THE PERSON'S GUARDIAN OR ATTORNEY MAY
14 FILE THE APPLICATION.

15 B. ON FILING OF THE APPLICATION THE COURT SHALL SET A HEARING AT WHICH
16 THE APPLICANT SHALL PRESENT PSYCHOLOGICAL OR PSYCHIATRIC EVIDENCE IN SUPPORT
17 OF THE APPLICATION. THE STATE MAY PRESENT EVIDENCE THAT THE PERSON REMAINS A
18 DANGER TO HIMSELF OR OTHERS OR REMAINS PERSISTENTLY OR ACUTELY DISABLED AND
19 SHOULD REMAIN A PROHIBITED POSSESSOR.

20 Sec. 2. Section 13-3101, Arizona Revised Statutes, is amended to read:

21 13-3101. Definitions

22 A. In this chapter, unless the context otherwise requires:

23 1. "Deadly weapon" means anything that is designed for lethal use.
24 The term includes a firearm.

25 2. "Deface" means to remove, alter or destroy the manufacturer's
26 serial number.

27 3. "Explosive" means any dynamite, nitroglycerine, black powder, or
28 other similar explosive material, including plastic explosives. Explosive
29 does not include ammunition or ammunition components such as primers,
30 percussion caps, smokeless powder, black powder and black powder substitutes
31 used for hand loading purposes.

32 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
33 rifle, shotgun or other weapon that will expel, is designed to expel or may
34 readily be converted to expel a projectile by the action of an explosive.
35 Firearm does not include a firearm in permanently inoperable condition.

36 5. "Improvised explosive device" means a device that incorporates
37 explosives or destructive, lethal, noxious, pyrotechnic or incendiary
38 chemicals and that is designed to destroy, disfigure, terrify or harass.

39 6. "Occupied structure" means any building, object, vehicle,
40 watercraft, aircraft or place with sides and a floor that is separately
41 securable from any other structure attached to it, that is used for lodging,
42 business, transportation, recreation or storage and in which one or more
43 human beings either are or are likely to be present or so near as to be in
44 equivalent danger at the time the discharge of a firearm occurs. Occupied

1 structure includes any dwelling house, whether occupied, unoccupied or
2 vacant.

3 7. "Prohibited possessor" means any person:

4 (a) Who has been found to constitute a danger to himself or to others
5 OR TO BE PERSISTENTLY OR ACUTELY DISABLED pursuant to court order under
6 section 36-540, and whose ~~court-ordered treatment has not been terminated by~~
7 ~~court order~~ RIGHT TO POSSESS A FIREARM HAS NOT BEEN RESTORED PURSUANT TO
8 SECTION 13-924.

9 (b) Who has been convicted within or without this state of a felony or
10 who has been adjudicated delinquent for a felony and whose civil right to
11 possess or carry a gun or firearm has not been restored.

12 (c) Who is at the time of possession serving a term of imprisonment in
13 any correctional or detention facility.

14 (d) Who is at the time of possession serving a term of probation
15 pursuant to a conviction for a domestic violence offense as defined in
16 section 13-3601 or a felony offense, parole, community supervision, work
17 furlough, home arrest or release on any other basis or who is serving a term
18 of probation or parole pursuant to the interstate compact under title 31,
19 chapter 3, article 4.

20 (e) Who is an undocumented alien or a nonimmigrant alien traveling
21 with or without documentation in this state for business or pleasure or who
22 is studying in this state and who maintains a foreign residence abroad. This
23 subdivision does not apply to:

24 (i) Nonimmigrant aliens who possess a valid hunting license or permit
25 that is lawfully issued by a state in the United States.

26 (ii) Nonimmigrant aliens who enter the United States to participate in
27 a competitive target shooting event or to display firearms at a sports or
28 hunting trade show that is sponsored by a national, state or local firearms
29 trade organization devoted to the competitive use or other sporting use of
30 firearms.

31 (iii) Certain diplomats.

32 (iv) Officials of foreign governments or distinguished foreign
33 visitors who are designated by the United States department of state.

34 (v) Persons who have received a waiver from the United States attorney
35 general.

36 8. "Prohibited weapon":

37 (a) Includes the following:

38 (i) An item that is a bomb, grenade, rocket having a propellant charge
39 of more than four ounces or mine and that is explosive, incendiary or poison
40 gas.

41 (ii) A device that is designed, made or adapted to muffle the report
42 of a firearm.

43 (iii) A firearm that is capable of shooting more than one shot
44 automatically, without manual reloading, by a single function of the trigger.

(iv) A rifle with a barrel length of less than sixteen inches, or shotgun with a barrel length of less than eighteen inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than twenty-six inches.

(v) An instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, in the design of a weapon used in connection with the practice of a system of self-defense.

(vi) A breakable container that contains a flammable liquid with a flash point of one hundred fifty degrees Fahrenheit or less and that has a wick or similar device capable of being ignited.

(vii) A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials.

(viii) An improvised explosive device.

(ix) Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (i), (vi) or (viii) of this subdivision.

(b) Does not include:

(i) Any fireworks that are imported, distributed or used in compliance with state laws or local ordinances.

(ii) Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.

(iii) A device that is commercially manufactured primarily for the purpose of illumination.

B. The items set forth in subsection A, paragraph 8, subdivision (a), items (i), (ii), (iii) and (iv) of this section do not include any firearms or devices that are registered in the national firearms registry and transfer records of the United States treasury department or any firearm that has been classified as a curio or relic by the United States treasury department.

Sec. 3. Section 32-2612, Arizona Revised Statutes, is amended to read:

32-2612. Qualifications of applicant for agency license; substantiation of work experience

A. Each applicant, if an individual, or each associate, director or manager, if the applicant is other than an individual, for an agency license to be issued pursuant to this chapter shall:

1. Be at least twenty-one years of age.

2. Be a citizen or a legal resident of the United States who is authorized to seek employment in the United States.

3. Not have been convicted of any felony or currently be under indictment for a felony.

1 4. Within the five years immediately preceding the application for an
2 agency license, not have been convicted of any misdemeanor act involving:

3 (a) Personal violence or force against another person or threatening
4 to commit any act of personal violence or force against another person.

5 (b) Misconduct involving a deadly weapon as provided in section
6 13-3102.

7 (c) Dishonesty or fraud.

8 (d) Arson.

9 (e) Theft.

10 (f) Domestic violence.

11 (g) A violation of title 13, chapter 34 or 34.1 or an offense that has
12 the same elements as an offense listed in title 13, chapter 34 or 34.1.

13 (h) Sexual misconduct.

14 5. Not be on parole, on community supervision, on work furlough, on
15 home arrest, on release on any other basis or named in an outstanding arrest
16 warrant.

17 6. Not be serving a term of probation pursuant to a conviction for any
18 act of personal violence or domestic violence, as defined in section 13-3601,
19 or an offense that has the same elements as an offense listed in section
20 13-3601.

21 7. Not be either of the following:

22 (a) Adjudicated mentally incompetent.

23 (b) Found to constitute a danger to self or others OR TO BE
24 PERSISTENTLY OR ACUTELY DISABLED pursuant to section 36-540.

25 8. Not have a disability as defined in section 41-1461, unless that
26 person is a qualified individual with a disability as defined in section
27 41-1461.

28 9. Not have been convicted of acting or attempting to act as a
29 security guard or a security guard agency without a license if a license was
30 required.

31 B. The qualifying party for an agency license and the resident
32 manager, if a resident manager is required PURSUANT TO SECTION 32-2616, shall
33 have at least three years of full-time experience as a manager, supervisor or
34 administrator of a security guard agency or three years of full-time
35 supervisory experience with any federal, United States military, state,
36 county or municipal law enforcement agency. The qualifying party for an
37 agency license and the resident manager, if a resident manager is required
38 PURSUANT TO SECTION 32-2616, must substantiate managerial work experience
39 claimed as years of qualifying experience and provide the exact details as to
40 the character and nature of the experience on a form prescribed by the
41 department and certified by the employer. On written request, an employer
42 shall submit to the employee a written certification of prior work experience
43 within thirty calendar days. The written certification is subject to
44 independent verification by the department. If an employer goes out of
45 business, the employer shall provide registered employees with a complete and

1 accurate record of their work history. If an applicant is unable to supply
2 written certification from an employer in whole or in part, the applicant may
3 offer written certification from persons other than an employer covering the
4 same subject matter for consideration by the department. The burden of
5 proving the minimum years of experience is on the applicant.

6 C. The department may deny an agency license if the department
7 determines that the applicant is unfit based on a conviction, citation or
8 encounter with law enforcement for a statutory violation.

9 Sec. 4. Section 36-540, Arizona Revised Statutes, is amended to read:
10 36-540. Court options

11 A. If the court finds by clear and convincing evidence that the
12 proposed patient, as a result of mental disorder, is a danger to self, is a
13 danger to others, is persistently or acutely disabled or is gravely disabled
14 and in need of treatment, and is either unwilling or unable to accept
15 voluntary treatment, the court shall order the patient to undergo one of the
16 following:

17 1. Treatment in a program of outpatient treatment.
18 2. Treatment in a program consisting of combined inpatient and
19 outpatient treatment.

20 3. Inpatient treatment in a mental health treatment agency, in a
21 veterans administration hospital pursuant to article 9 of this chapter, in
22 the state hospital or in a private hospital, if the private hospital agrees,
23 subject to the limitations of section 36-541.

24 B. The court shall consider all available and appropriate alternatives
25 for the treatment and care of the patient. The court shall order the least
26 restrictive treatment alternative available.

27 C. The court may order the proposed patient to undergo outpatient or
28 combined inpatient and outpatient treatment pursuant to subsection A,
29 paragraph 1 or 2 of this section if the court:

30 1. Determines that all of the following apply:
31 (a) The patient does not require continuous inpatient hospitalization.
32 (b) The patient will be more appropriately treated in an outpatient
33 treatment program or in a combined inpatient and outpatient treatment
34 program.

35 (c) The patient will follow a prescribed outpatient treatment plan.

36 (d) The patient will not likely become dangerous or suffer more
37 serious physical harm or serious illness or further deterioration if the
38 patient follows a prescribed outpatient treatment plan.

39 2. Is presented with and approves a written treatment plan that
40 conforms with the requirements of section 36-540.01, subsection B. If the
41 treatment plan presented to the court pursuant to this subsection provides
42 for supervision of the patient under court order by a mental health agency
43 that is other than the mental health agency that petitioned or requested the
44 county attorney to petition the court for treatment pursuant to section
45 36-531, the treatment plan must be approved by the medical director of the

1 mental health agency that will supervise the treatment pursuant to subsection
2 E of this section.

3 D. An order to receive treatment pursuant to subsection A, paragraph 1
4 or 2 of this section shall not exceed three hundred sixty-five days. The
5 period of inpatient treatment under a combined treatment order pursuant to
6 subsection A, paragraph 2 of this section shall not exceed the maximum period
7 allowed for an order for inpatient treatment pursuant to subsection F of this
8 section.

9 E. If the court enters an order for treatment pursuant to subsection
10 A, paragraph 1 or 2 of this section, all of the following apply:

11 1. The court shall designate the medical director of the mental health
12 treatment agency that will supervise and administer the patient's treatment
13 program.

14 2. The medical director shall not use the services of any person,
15 agency or organization to supervise a patient's outpatient treatment program
16 unless the person, agency or organization has agreed to provide these
17 services in the individual patient's case and unless the department has
18 determined that the person, agency or organization is capable and competent
19 to do so.

20 3. The person, agency or organization assigned to supervise an
21 outpatient treatment program or the outpatient portion of a combined
22 treatment program shall be notified at least three days before a referral.
23 The medical director making the referral and the person, agency or
24 organization assigned to supervise the treatment program shall share relevant
25 information about the patient to provide continuity of treatment.

26 4. During any period of outpatient treatment under subsection A,
27 paragraph 2 of this section, if the court, on motion by the medical director
28 of the patient's outpatient mental health treatment facility, determines that
29 the patient is not complying with the terms of the order or that the
30 outpatient treatment plan is no longer appropriate and the patient needs
31 inpatient treatment, the court, without a hearing and based on the court
32 record, the patient's medical record, the affidavits and recommendations of
33 the medical director, and the advice of staff and physicians familiar with
34 the treatment of the patient, may enter an order amending its original order.
35 The amended order may alter the outpatient treatment plan or order the
36 patient to inpatient treatment pursuant to subsection A, paragraph 3 of this
37 section. The amended order shall not increase the total period of commitment
38 originally ordered by the court or, when added to the period of inpatient
39 treatment provided by the original order and any other amended orders, exceed
40 the maximum period allowed for an order for inpatient treatment pursuant to
41 subsection F of this section. If the patient refuses to comply with an
42 amended order for inpatient treatment, the court may authorize and direct a
43 peace officer, on the request of the medical director, to take the patient
44 into protective custody and transport the patient to the agency for inpatient
45 treatment. When reporting to or being returned to a treatment agency for

1 inpatient treatment pursuant to an amended order, the patient shall be
2 informed of the patient's right to judicial review and the patient's right to
3 consult with counsel pursuant to section 36-546.

4 5. During any period of outpatient treatment under subsection A,
5 paragraph 2 of this section, if the medical director of the outpatient
6 treatment facility in charge of the patient's care determines, in concert
7 with the medical director of an inpatient mental health treatment facility
8 who has agreed to accept the patient, that the patient is in need of
9 immediate acute inpatient psychiatric care because of behavior that is
10 dangerous to self or to others, the medical director of the outpatient
11 treatment facility may order a peace officer to apprehend and transport the
12 patient to the inpatient treatment facility pending a court determination on
13 an amended order under paragraph 4 of this subsection. The patient may be
14 detained and treated at the inpatient treatment facility for a period of no
15 more than forty-eight hours, exclusive of weekends and holidays, from the
16 time that the patient is taken to the inpatient treatment facility. The
17 medical director of the outpatient treatment facility shall file the motion
18 for an amended court order requesting inpatient treatment no later than the
19 next working day following the patient being taken to the inpatient treatment
20 facility. Any period of detention within the inpatient treatment facility
21 pending issuance of an amended order shall not increase the total period of
22 commitment originally ordered by the court or, when added to the period of
23 inpatient treatment provided by the original order and any other amended
24 orders, exceed the maximum period allowed for an order for inpatient
25 treatment pursuant to subsection F of this section. If a patient is ordered
26 to undergo inpatient treatment pursuant to an amended order, the medical
27 director of the outpatient treatment facility shall inform the patient of the
28 patient's right to judicial review and to consult with an attorney pursuant
29 to section 36-546.

30 F. The maximum periods of inpatient treatment that the court may
31 order, subject to the limitations of section 36-541, are as follows:

- 32 1. Ninety days for a person found to be a danger to self.
33 2. One hundred eighty days for a person found to be a danger to
34 others.
35 3. One hundred eighty days for a person found to be persistently or
36 acutely disabled.
37 4. Three hundred sixty-five days for a person found to be gravely
38 disabled.

39 G. If, on finding that the patient is gravely disabled, the court also
40 finds that the evidence indicates that the patient is or may be in need of
41 guardianship or conservatorship, or both, the court shall order an
42 investigation concerning the need for a guardian or conservator, or both, and
43 shall appoint a suitable person or agency to conduct the investigation. The
44 appointee may include the mental health treatment agency that is providing
45 inpatient or outpatient treatment, a court appointed visitor or the public

1 fiduciary if there is no person willing and qualified to act in that
2 capacity. The court shall give notice of the appointment to the appointee
3 within three days of the appointment. The appointee shall submit the report
4 of the investigation to the court within twenty-one days. The report shall
5 include recommendations as to who should be guardian or who should be
6 conservator, or both, and a report of the findings and reasons for the
7 recommendation. If the investigation and report so indicate, the court shall
8 order the appropriate person to submit a petition to become the guardian or
9 conservator, or both, of the patient.

10 H. If, on finding that a patient is gravely disabled, the court also
11 finds that the patient is in need of immediate guardianship for the purpose
12 of protection of the patient or for the purpose of carrying out alternatives
13 to court-ordered treatment, the court may appoint as a temporary guardian a
14 suitable person or the public fiduciary, if there is no person qualified and
15 willing to act in that capacity.

16 I. If, on finding that a patient is gravely disabled, the court also
17 learns that the patient has a guardian appointed under title 14, the court
18 may with notice impose on the existing guardian additional duties pursuant to
19 section 14-5312.01.

20 J. The court shall file a report as part of the court record on its
21 findings of alternatives for treatment.

22 K. Treatment shall not include psychosurgery, lobotomy or any other
23 brain surgery without specific informed consent of the patient or the
24 patient's legal guardian and an order of the superior court in the county in
25 which the treatment is proposed, approving with specificity the use of the
26 treatment.

27 L. The medical director or any person, agency or organization used by
28 the medical director to supervise the terms of an outpatient treatment plan
29 shall not be held civilly liable for any acts committed by a patient while on
30 outpatient treatment if the medical director, person, agency or organization
31 has in good faith followed the requirements of this section.

32 M. A peace officer who in good faith apprehends and transports a
33 patient to an inpatient treatment facility on the order of the medical
34 director of the outpatient treatment facility pursuant to subsection E,
35 paragraph 5 of this section shall not be subject to civil liability.

36 N. If a person has been found, as a result of a mental disorder, to
37 constitute a danger to self or others **OR TO BE PERSISTENTLY OR ACUTELY**
38 **DISABLED** and the court enters an order for treatment pursuant to subsection A
39 of this section, the court shall grant access to the person's name, date of
40 birth, social security number, **AND** date of commitment ~~and, on termination of~~
41 ~~treatment by court order, date of termination~~ to the department of public
42 safety to comply with the requirements of title 13, chapter 31 and title 32,
43 chapter 26.